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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CHESAPEAKE & O. RY. CO. v. SHIPP'S ADM'X.

Nov. 17, 1910.

[69 S. E. 925.]

1. **Trial (§ 156*)—Demurrer to Evidence—Effect.**—The court on ruling on a demurrer to the evidence must presume that the evidence is true.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.*]

2. **Negligence (§ 136*)—Question for Jury.**—Where reasonable men will differ on the issue of negligence under the evidence, the issue is for the jury, and the inference to be drawn from the evidence must be either certain or uncontrovertible, or it cannot be decided by the court.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. §§ 277-326; Dec. Dig. § 136.*]

3. **Master and Servant (§ 286*)—Injury to Servant—Negligence—Evidence.**—Whether a brakeman on a caboose which had been placed on the main track exercised reasonable care to discover the peril of an employee on the track, and whether after discovering the peril, or, in the exercise of reasonable diligence, ought to have discovered it, he performed his duty to avoid injury to the employee, held, under the evidence, for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1010-1050; Dec. Dig. § 286.*]

Error from Circuit Court, Augusta County.

Action by John A. Shipp's administratrix against the Chesapeake & Ohio Railway Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

R. L. Parrish and J. M. Perry, for plaintiff in error.

Timberlake & Nelson and Charles & Duncan Curry, for defendant in error.

WORLEY v. ADAMS et al.

Jan. 12, 1911.

[69 S. E. 929.]

1. **Wills (§ 602*)—Construction—Estates Created.**—Testator gave

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes

his widow a designated portion of his home tract of land, at her death the real estate to be given to his two daughters, to whom he gave the residue of his home tract. He further provided that his estate should be kept together as much as possible for five years or until his debts were paid, and that his whole estate should then be divided as directed in his will. His will further provided that, if any of his children should die leaving no lawful child, the portion of the estate willed to such child should be equally divided among the surviving children, and, if any of his children should die leaving children, that the children of the deceased parent should inherit their parent's portion. Held, that the realty given to testator's children was an estate in fee, defeasible upon the death of the child leaving no lawful child surviving, and that the defeasance was to be determined at the time of the death of any one of testator's children, and was not affected by the provision of the will that the estate was to be divided at the expiration of five years or when all of testator's debts were satisfied, so that a deed by any of the testator's children conveyed his share of the property, unless he subsequently died without issue.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1354; Dec. Dig. § 602.*]

2. Acknowledgment (§ 32*)—Certificate of Acknowledgment by Married Woman—"N. P."—A certificate of acknowledgment of married woman of a deed, began with "State of Virginia, County of Pittsylvania, to wit," which was followed by, "I hereby certify that" certain women named, wives of men named, "personally appeared before me in my county aforesaid and being examined by me privily and apart from their husbands, after having the aforesaid writing fully explained to them, they * * * each for herself acknowledge the same to be her act and deed and declared that she had made it willingly and does not wish to retract it. Given under my hand this 10th day of March, 1877." The name signed to the acknowledgment was followed by the letters "N. P." Held, that the certificate was a sufficient statement that the person signing the certificate was a notary public for the state of Virginia and for the county of Pittsylvania, that he was acting in his official capacity, and gave official authentication to his act by subscribing his name followed by "N. P."

[Ed. Note.—For other cases, see Acknowledgment, Dec. Dig. § 32.*]

For other definitions, see Words and Phrases, vol. 5, p. 4656.]

Error to Circuit Court, Pittsylvania County.

Action by H. W. Adams and others against J. B. Worley.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Judgment for plaintiffs, and defendant brings error. Reversed, and judgment rendered.

Peatross & Harris, for plaintiff in error.

Geo. T. Rison and *Jas. L. Tredaway*, for defendants in error.

RICHARDSON *v.* J. S. HOSKINS LUMBER CO.

Jan. 12, 1911.

[69 S. E. 935.]

1. Attachment (§ 322*)—Levy—Return—Requisites.—A return on an attachment against real estate, which recites that the attachment was executed by a levy on real estate of defendant located in a designated magisterial district of a designated county, being the same land conveyed to defendant by a special commissioner of the county circuit court by deed recorded in a certain deed book on pages specified, identifies the land with sufficient certainty for purposes of sale and conveyance without the aid of extrinsic evidence, and is a substantial compliance with Code, 1904, § 2967, prescribing that the return shall describe the estate of defendant levied on.

[Ed. Note.—For other cases, see Attachment, Cent. Dig. § 1157; Dec. Dig. § 322.*]

2. Evidence (§ 416*)—Parol Evidence—Description of Premises.—Where a map, plan, survey, or deed is referred to in an instrument for the description of land, it is a part of the instrument itself, and is not extrinsic evidence.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1903; Dec. Dig. § 416.*]

Error to Circuit Court, Mathews County.

Action by one Richardson against the J. S. Hoskins Lumber Company. There was a judgment quashing an attachment against real estate, and plaintiff brings error. Reversed.

J. N. Stubbs and *J. R. Saunders*, for plaintiff in error.

J. Boyd Sears and *Garnett & Pollard*, for defendant in error.

DARLING'S EX'R *v.* CUMMING et al.

Jan. 12, 1911.

[69 S. E. 940.]

Trusts (§ 316*)—Accounting and Settlement—Commission and Allowances.—An executor was made a trustee under a residuary clause

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.